

IN THE CLAIMS

Claim 1. (original) An elongate canister comprising a generally rectangular cross-section formed by a front wall, a five-section back wall and two side walls, the front wall, irregular back wall and side walls, the walls extending between the top and bottom of the canister and having dimensions so that a generally hexagonally shaped interior is formed to house a plurality of generally circular shaped microorganism identification test devices stacked one atop another within the canister.

Claim 2. (original) The canister of claim 1 further comprising a top end portion and a bottom end portion closing the top and bottom of the canister.

Claim 3. (previously amended) The canister of claim 1 further comprising a number of internal ribs extending lengthwise along the interior of the front walls and side walls to secure the test devices within the canister.

Claim 4. (previously amended) The canister of claim 2 further comprising a mounting flange extending slightly below the bottom end portion so that the canister may be secured within a mounting groove in a vertical position.

Claim 5. (being amended) The canister of claim 4 further comprising a rotor canister latching flange extending slightly above the top end portion, the latching flange having a pair of canister latch steps engagable by spring-loaded latching cams. ~~secured within the chamber.~~

Claim 6. (previously amended) The canister of claim 4 further comprising a test device eject port formed in the front wall proximate the mounting flange.

Claim 7. (original) The canister of claim 6 wherein the eject port has the shape of a rectangular opening formed between a pair of rotor canister protrusions each having an opened rotor canister slit at the top of protrusions.

Claim 8. (original) The canister of claim 7 further comprising an upwardly projecting flexible tab extending into the eject port and adapted to retain rotors within canister to impede

accidental dislodging of a test device from the canister and to impede rotors from being improperly inserted back into canister.

Claim 9. (previously amended) The canister of claim 1 comprising an indented sheet of plastic folded in half and sealed at a flange extending the full length of the canister at the juncture of the front wall and the five-section back wall.

Claim 10. (original) The canister of claim 9 further comprising a sealed fold extending the full length of the canister between the front wall and the five-section back wall.

Claim Rejections – 35 USC §112, second paragraph

Claim 5 has been rejected under 35 USC §112, second paragraph, as being indefinite. In response, claim 5 has been amended so as to particularly point out and distinctly claim the subject matter which applicant regards as the invention. As disclosed in the specification, and as now claimed in claim 5, the canister has a latching flange at its top with a pair of latch steps that may be engaged by spring-loaded latching cams in order to secure the canister within a chamber. No new material has been added.

Claim Rejections – 35 USC §103

Claims 1-2 are rejected under 35 USC §103(a) as being unpatentable over Guibert (4,269,169) in view of Abe (5,534,224). The Examiner is urging that it is obvious to replicate Applicant's invention by combining Guibert's cartridge for heating fast food in trays with Abe's cartridge device for storing and dispensing rectangular film chips irrespective of their states of warp. Guibert's cartridge is known to artisans in the fast food industry (Col 1; lines 20-25); Abe's cartridge is known to artisans in the field of clinical biochemistry (Col 1; lines 18-21). The present invention is directed at a canister to house microorganism identification test devices; applicant objects to selecting art from a field so distant away and so different from microbiology as is cooking fast food and using that art to contend that applicant's invention is obvious. There is no reason to expect a fast food artisan to be familiar with the field of clinical biochemistry and there is no reason to expect a clinical biochemist to be familiar with fast food preparation.

Applicant's objection is supported by the MPEP. Section 2141.01(a) is titled "TO REPLY ON A REFERENCE UNDER 35 USC 103, IT MUST BE ANALOGOUS PRIOR ART" and goes on to rule that:

"In order to reply on a reference as a basis for rejection of applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the invention was concerned. A reference is reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with it deals, logically would have commended itself to an inventor's attention in considering his problem".

Clearly, the Guibert reference dealing with a cartridge for heating fast food in trays is not "in the field of applicant's endeavor". Neither is the Guibert reference "reasonably pertinent" because the problem applicant was seeking to eliminate is the necessity for an operator to manually select test rotors preloaded with particular biochemical agents from a hospital's supply resources and load them by hand onto a microbiological analyzer. Applicant invented a canister with features to facilitate automated handling of test rotors as well as features to facilitate dispensing rotor one at a time from within the canister when maintained on an analyzer. In developing applicant's invention, it was important that the rotors not jam within the canister and also that the rotors be dispensed only one at a time and not fall freely from the canister. The claimed canister has features to provide these functions. It is beyond applicant's imagination that art in the field of heating fast food would have "logically commended itself" to solving these problems or that "because of the matter with it deals" (in the case of Guibert, the matter is heating fast food), it would have "commended itself to the inventor's attention". If the Examiner can provide logical reasons for the applicant to have sought out a fast food oven to solve the rotor canister problems addressed by his invention, applicant will gladly reconsider his objection.

Applicant also notes that close reading fails to uncover any seen, suggested or even hinted reason or motivation within these two references to make such a combination; Applicant therefore respectfully suggests that the obviousness rejection of claims 1-2 over the Guibert and Abe devices is even further improper and should be set aside.

Claim 3 is rejected under 35 USC §103(a) as being unpatentable over Guibert (4,269,169) and Abe (5,534,224) in view of James (5,590,833). In addition to the comments made above relative to an improper combination of the Guibert and Abe devices, Applicant notes that James deals with a closed package for safely storing cookies which has nothing to do with dispensing round-like objects one at a time from a canister. For the same reasons as stated before, applicant does not believe the James reference is "in the field of applicant's endeavor" or "reasonably pertinent" to applicant's invention. Thus, the obviousness rejection of claim 3 over the Guibert, Abe, and James devices is also improper and should be withdrawn.

Claims 4-6, 9 and 10 are rejected under 35 USC §103(a) as being unpatentable over Guibert (4,269,169) and Abe (5,534,224) as applied to claims 1 and 2 and further in view of Warner (5,642,810). All of these claims depend from claims 1 and 2 and for the reasons stated

earlier, Applicant respectfully suggests that the obviousness rejection of claims 1-2 is improper and should be withdrawn, making dependent claims 4-6, 9 and 10 allowable.

Claims 7 and 8 are objected to as being dependent upon a rejected base claim, claim 1. For the reasons stated above, Applicant respectfully suggests that the obviousness rejection of claim 1 is improper and should be withdrawn, making dependent claims 7 and 8 allowable as originally submitted.

Conclusion

Applicant believes that this application now contains patentable subject matter and that the foregoing amendment and explanation provide a basis for favorable consideration and allowance of all claims; such allowance is respectfully requested. If any matter needs to be resolved before allowance, the Examiner is encouraged to call Applicant's representative at the number provided below.

Respectfully submitted,

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